

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
L & S Knitting Mills, Inc.

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation Franchise  
Tax under Article 9A of the Tax Law  
for the Year Ending 2/28/79. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 26th day of July, 1984, he served the within notice of Decision by certified mail upon L & S Knitting Mills, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

L & S Knitting Mills, Inc.  
456 Driggs Ave.  
Brooklyn, NY 11211

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
26th day of July, 1984.

David Parchuck

Conrad A. Hammond  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
L & S Knitting Mills, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law :  
for the Year Ending 2/28/79.

State of New York }  
ss.:  
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 26th day of July, 1984, he served the within notice of Decision by certified mail upon Seymour Thaler, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour Thaler  
Schwartz and Thaler  
855 Avenue of the Americas  
New York, NY 10001

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
26th day of July, 1984.

David Parchuck

James A. [Signature]  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

July 26, 1984

L & S Knitting Mills, Inc.  
456 Driggs Ave.  
Brooklyn, NY 11211

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 Months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Seymour Thaler  
Schwartz and Thaler  
855 Avenue of the Americas  
New York, NY 10001  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
L & S KNITTING MILLS, INC.  
for Redetermination of a Deficiency or for  
Refund of Corporation Franchise Tax under  
Article 9-A of the Tax Law for the Fiscal Year  
Ended February 28, 1979.

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DECISION

Petitioner, L & S Knitting Mills, Inc., 456 Driggs Avenue, Brooklyn, New York 11211, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal year ended February 28, 1979 (File No. 31790).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 27, 1983 at 3:45 P.M., with all documents to be filed on or before October 27, 1983. Petitioner appeared by Schwartz and Thaler (Seymour Thaler, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner properly claimed carryovers of investment tax credits on its corporate franchise tax report for the fiscal year ended February 28, 1979.

FINDINGS OF FACT

1. Petitioner filed a New York Corporation Franchise Tax Report for the fiscal year ended February 28, 1979. On this report, petitioner claimed an investment tax credit arising from the purchase of knitting machinery during

1978, of \$1,143.00. Petitioner also claimed a carryover of unused investment tax credits from a predecessor corporation, Helene Creations, Inc. ("Helene"). Petitioner computed the amount of the carryover of the unused investment tax credit by adding the amount of the unused investment tax credit from the fiscal year ended October 31, 1975 of \$576.00, plus carryovers of investment tax credits from the fiscal years ending October 31, 1976 and October 31, 1977 of, respectively, \$495.00 and \$427.00, for a total of \$1,498.00. Therefore, the total investment tax credit claimed on the report for the fiscal year ended February 28, 1979 was \$2,641.00.

2. On August 29, 1980, the Audit Division issued a Notice of Deficiency accompanied by an explanatory Statement of Audit Adjustment to petitioner, L & S Knitting Mills, Inc. The Notice asserted a deficiency of tax for the fiscal year ended February 28, 1979 of \$817.00, plus interest of \$91.46, for a total of \$908.46. The Statement of Audit Adjustment explained that the claimed carryovers of the investment tax credits for the years ended October 31, 1975 and October 31, 1976 were disallowed since Helene did not submit claims for investment tax credits in the years of acquisition. However, the Audit Division permitted the application of an unused investment tax credit of \$502.00 from the fiscal year ended October 31, 1974 and an unused investment tax credit of \$179.00 from the fiscal year ended October 31, 1977, resulting in an allowed investment tax credit carryforward of \$681.00. Accordingly, petitioner's asserted deficiency was computed as follows:

Tax due per franchise tax report		\$3,373.00
Less: Investment tax credit	\$1,143.00	
Investment tax credit carryforward	<u>681.00</u>	<u>1,824.00</u>
Tax due		\$1,549.00
Tax paid per report		<u>732.00</u>
Deficiency		<u>\$ 817.00</u>

The Answer of the Audit Division also asserted that the disallowance of the claimed investment tax credits was based upon petitioner's failure to substantiate the date of acquisition, cost, useful life and nature and use of the allegedly eligible equipment.

3. On October 31, 1978, Helene merged with petitioner. Prior to the merger, Helene was a related corporation which was involved in the same type of business as petitioner, i.e., both Helene and petitioner manufactured knitwear.

4. Helene filed a U.S. Corporation Income Tax Return for the fiscal year ended October 31, 1976. The return disclosed that an investment tax credit was claimed upon the purchase of assets, during the fiscal year ended October 31, 1976, at a cost of \$24,732.00. These were the assets upon which the investment tax credit carryforward for the fiscal year ended October 31, 1976 was claimed. The depreciation schedule on the return disclosed that during the year 1974, Helene purchased assets at a cost of \$16,120.00 and that during the fiscal year ended October 31, 1974, Helene purchased assets at a cost of \$25,281.00. The amount claimed by petitioner as an investment tax credit carryforward from the fiscal year ended October 31, 1975 was based upon Helene's purchases of assets during the years 1973 and 1974.

5. Helene was not in the practice of retaining copies of the New York State Corporation Tax Reports or documents substantiating purchases of assets during the years it acquired the assets in issue.

6. At the hearing, petitioner argued that since the investment tax credit on the assets in issue was permitted by the Internal Revenue Service, it should be permitted by New York State.

7. After the hearing, petitioner submitted an affidavit from an individual who was an officer of Helene from its inception in 1971 to its dissolution.

The affidavit stated that the dates of acquisition, cost and useful life of the equipment were as reported on the federal returns during the period. It also stated that the equipment had been purchased for use by Helene in the production of knitwear and consisted of knitting machines and attachments thereto. Petitioner also submitted an affidavit from the certified public accountant who was a partner in the firm that prepared Helene's returns. The affiant stated in this affidavit that "...to the best of his knowledge and belief, all of the income tax returns for Helene Creations, Inc. were filed with investment tax credit schedules where such schedules were called for."

CONCLUSIONS OF LAW

A. That the federal tax return for the fiscal year ended October 31, 1976, in conjunction with the affidavit from Helene's former officer are not sufficient to substantiate that the purchases upon which the investment tax credit carryforwards were claimed were of qualified property within the meaning of Tax Law §210(12)(b) and 20 NYCRR 5-2.2. Accordingly, petitioner has failed to sustain its burden of proof establishing that the investment tax credit carryforwards were claimed upon qualified property [Tax Law §1089(e)].


B. That in view of Conclusion of Law "A", it is unnecessary to discuss whether claims for investment tax credit (form CT-46) were filed.

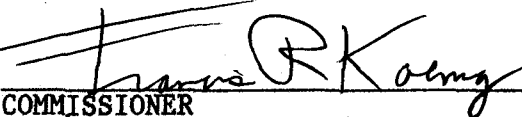
C. That the petition of L & S Knitting Mills, Inc. is denied.

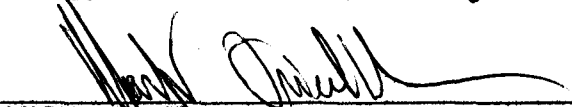
DATED: Albany, New York

STATE TAX COMMISSION

JUL 26 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER